

**Committee for Open Expression investigation report**  
*Submitted to the Emory University Senate*

**Disclaimer:** This confidential report is pending senate approval and subject to change as more information becomes available. This enquiry was conducted by a senate committee, Committee for open expression and the report was written under the authority granted by Emory's Respect for Open Expression Policy 8.14. This committee does not consist of subject matter experts and this report is NOT a legal document and has not been approved yet.

CONF - Pending Senate Approval

**Title of the investigation:** Investigation into a termination of the Stop Cop City protest on April 24-25, 2023

**Name and title of the Person preparing the Report:** Prof. Ilya Nemenman, Professor of Physics and Biology, CFOE Chair

**Date of submission:** Feb 21, 2024

**Duration of the investigation:** Original complaint to the CFOE was submitted on 9/26/2023. Investigation completed 2/20/2024.

**Summary:** On April 24, 2023, the Emory Stop Cop City group organized an event on the Quad protesting construction of the Atlanta Public Safety Training Center. The event was originally accommodated even though it was in the space reserved for other University functions. However, the situation deteriorated, and close to midnight Division of Campus Life (DCL) transferred authority to Emory Police (EPD) to end the event. EPD requested the help of Atlanta police. The protest eventually ended peacefully after about 1:30 am on Apr 25, 2023. No arrests were made, and no physical altercations were reported. In response to the complaint about violation of multiple paragraphs of the Respect for Open Expression policy by the DCL/EPD at the event, submitted to CFOE on 9/26/2023, a CFOE Hearing Panel found the following:

1. The Panel could not reach a unanimous conclusion on whether transfer of authority from DCL to EPD and the protest termination had been warranted. In view of multiple Panel members, the history of the events during and preceding that day could lead a reasonable

person to conclude that the overnight continuation of the protest was a substantial safety risk.

2. The Panel found that in the early part of the event, and in the days after the event, DCL had worked with the Protestors to identify ways to support and continue the protest.
3. The Panel found that the DCL had fulfilled its obligations to contact the CFOE Chair before the event was terminated and arrests were threatened.
4. The Panel found that the event should be viewed as forcibly terminated, and hence DCL had not fulfilled its responsibility to provide a full statement of the circumstances leading to the incident to the University community.

CFOE proposes that:

1. The University Senate should request a detailed statement from DCL about termination of the Protest.
2. Soon after DCL issues the full statement, the University Senate / CFOE should organize a community forum to discuss the events, aiming to restore trust and to create an environment where similar confrontations are less likely.
3. The Senate, the University Administration, and the Student Government should work proactively to establish a campus climate that emphasizes dialogue, listening, and cooperation over confrontation.
4. The University Senate/CFOE should initiate a process of re-examining and possibly amending the Respect for Open Expression Policy to address the concerns identified by this investigation.

## **1. Introduction:**

On April 24, 2023, the Emory Stop Cop City group organized an event on the Quad protesting construction of the Atlanta Public Safety Training Center and the participation of the Emory University in organizations supporting the construction (specifically, Pres. Fennes is a member of the Atlanta Committee for Progress, which supports the construction of the Center). The event started in the afternoon of Apr 24. It was in a space reserved for other University functions, but the Division of Campus Life (DCL, which is charged with implementing the Respect for Open Expression Policy – hereafter, the Policy) initially facilitated the event on the Quad. During the event, the interactions between the event organizers and the DCL deteriorated. Eventually, in the late hours of Apr 24, DCL declared the protesters in violation of the Policy, decided that the protest must not be allowed to continue, and delegated its authority to the Emory Police Department (EPD). As EPD was understaffed, they requested the presence of the Atlanta Police. The protesters were informed that they must leave the Quad or be subject to arrest, and they peacefully dispersed after about 1:30 am on Apr 25, 2023. No arrests were made, and no physical altercations were reported.

The Organizers of the event have not contacted the Committee for Open Expression to assert their rights under the Policy were violated. However, on Sept 26, 2023, a group of ECAS faculty filed a complaint with the CFOE on their behalf (see Attachment).

The specific claims in this complaint were that:

- i. “In violation of 8.14.7.1, the Dean of Campus Life delegated their authority to the Emory

Police Department in the absence of an emergency as defined therein (a situation that poses imminent serious bodily harm, serious threat, imminent life-threatening behavior, reckless disregard for human life, or threat to life, limb, or property);”

- ii. “In violation of 8.14.7.2, the Dean of Campus Life and the Committee for Open Expression did not work with students to identify ways to continue the protest;”
- iii. “In violation of 8.14.7.3, the Chair of the Committee for Open Expression was not consulted before student arrests were threatened and the protest was forcibly terminated;”
- iv. “In violation of 8.14.7.3, the protest was forcibly terminated in the absence of any of the factors that may have warranted forcible termination as indicated therein (injury to persons, property damage, or significant interference with educational processes);”
- v. “In violation of 8.14.7.3, the Dean of Campus Life has not yet published a full statement of the circumstances leading to the forcible termination of the protest.”

The goal of the investigation was to analyze alleged violation of the Open Expression rights in the five items above. Additionally, the goal is to understand if revisions of the Policy might be warranted in view of the transpired events.

The CFOE is, in fact, not bound by the submitted investigation requests and may initiate investigations on its own (i.e., notices of potential OE rights violations submitted by CFOE members could also act as a reason to start an investigation). Investigations related to this complaint were started on April 25 by the CFOE Chair, and they continued throughout the summer of 2023 with related interviews. The University Senate constituted CFOE for the AY 2023-24 only during its September 2023 meeting, and it became possible to proceed with the bulk of the investigation after that.

## **2. Background:**

Emory University is a private institution, and thus First Amendment rights do not necessarily apply. However, the University has adopted the Respect for Open Expression Policy, Policy 8.14, which governs expression, protest, and dissent on campus. The Policy states that “Emory University (“University”) is committed to an environment where the open expression of ideas and open, vigorous debate and speech are valued, promoted, and encouraged. As a community of scholars, we affirm these freedoms of thought, inquiry, speech, and assembly.” The Policy states that “Emory University respects the Constitutional rights of free speech and assembly.” This has been interpreted by CFOE consistently as the University providing the same protection to its community members as afforded by the First Amendment to the U.S. Constitution to members of U.S. public universities, with Emory playing the role of the government on its campus in expression-related situations.

The Policy acknowledges that “some protest may be externally focused, ... [and] that some protest may be internally focused, directed at the leadership of the institution, ... Both forms of protest are valued, protected, and affirmed.” The Protest being investigated was both externally and internally focused.

The Policy lays out the responsibilities, the composition, and the procedures of the University Senate Committee for Open Expression, which “is a working group of community members—

faculty, staff, and students—who seek to promote and protect the rights and responsibilities of community members related to issues and controversies involving speech, debate, open expression, protest, and other related matters.” The Policy is incongruent with the University Senate Bylaws regarding the composition and the terms of service of its members, which must be rectified in the next revision of the Policy and the Bylaws. This inconsistency sometimes hampers the operation of CFOE, but the Panel believes that it did not affect this current investigation.

The Policy vests its enforcement into the Division of Campus Life (DCL). DCL is usually represented by Open Expression Observers (OEO), whose role is to “help protect open expression and the rights of all parties involved,” “while making modifications to ensure no violations [of the Policy] continue to occur.” Whenever possible OEOs should consult CFOE “before making a determination that members of the Community are indeed violating the principles of this Policy.” Since it is alleged that DCL/OEO were the parties violating the OE rights of the participants in the Apr 24-25 protest, this makes analysis of the events being evaluated especially complicated.

The Policy supports “impromptu Expression, Dissent, and Protest” and states that “not having a reservation is not sufficient reason for terminating any Protest unless the impromptu Protest unreasonably interferes with prior scheduled Meetings, Events, or essential operations of the University.” The Policy calls for OEOs to ensure that “impromptu Expression, Dissent, or Protest continues until it should otherwise be relocated to allow for prior scheduled activities.” The OEOs must “demonstrate this affirmative commitment by working with those involved to identify space where the Expression, Protest, or Dissent can be continued should the space being used interfere with other scheduled Meetings, Events, or essential operations.”

The Policy is clear that “Except in emergencies, the DCL’s authority” over OE events “shall not be delegated to employees of the Emory Police Department. Emergencies, for purposes of this clause, are defined as situations that include any of the following: imminent serious bodily harm; serious threat; imminent life threatening behavior; reckless disregard for human life; or threat to life, limb, or property.” Specifically, Item 8.14.7.3 of the Policy states “Termination of an event or any arrests must be the option of last resort. The Chair of the Committee for Open Expression, or their designee, must be consulted and must have advised of all alternatives to support continuation of the Expression, Protest, or Dissent before there is any termination or arrest. Avoidance of injury to persons by the continuation of a Meeting, Event, or Protest is a key factor in determining whether it should be forcibly terminated. Property damage and significant interference with educational processes are also factors to be considered and may be of sufficient magnitude to warrant forcible termination. If a Meeting, Event, or Protest is forcibly terminated, a full statement of the circumstances leading to the incident shall be publicized by the DCL within the University.”

The Policy protects the Open Expression rights of the Emory University Community members, but it also represents a community compact, to which all community members must adhere in their expression events. In other words, the Policy lists not just the rights, but also the responsibilities. This include “the right of others [non-protestors] to pursue their normal activities and to be protected from injury or property damage, as defined by law.” Further, the

Policy says that “The University promotes simultaneous, but not disruptive, Dissent” and that “Civility and mutual respect are important values in our community; while they do not limit the rights protected by this Policy, we ask all members of the Community to consider these values carefully when exercising their fundamental right to open expression.” The policy states that the Open Expression rights are not absolute, and the Policy does not protect actions that are no longer “within the spirit of Open Expression” at Emory if

- “they interfere unreasonably with the activities or rights of other persons. Factors that may be considered in determining whether conduct is reasonable include, but are not limited to, the time of day, size of audience, and noise level of a Meeting, Event, or Protest.”
- “They hold Meetings, Events, or Protests under circumstances where the health or safety of persons is endangered.”
- “They cause injury to persons or property or threaten to cause such injury.”
- “They use or threaten violence or force or encourage others to use or threaten violence or force. They cause harassment, as defined by state law.”

(The Policy is unclear if this is an exhaustive list, or a list of examples.)

The Committee also acknowledges that the Emory University Respect of Open Expression Policy is still rather new, requiring additional clarifications and interpretations. In particular, CFOE has consistently stated that members of the University administration are also members of the University community, who have OE rights under the Policy.

Further, the CFOE believes that the intent of the Policy is not to create situations that will paralyze university operations, including, in particular, enforcement of the Policy itself. It is the job of the Committee to reconcile many different values and procedures that can coexist in our idealistic view of the University but may come in conflict in real life. When the letter of the Policy cannot be followed due to unforeseen circumstances, it is the job of the community members to follow the spirit of the Policy, and the job of the CFOE is to evaluate if the letter and the spirit were followed.

Policy 8.1, Emory University Undergraduate Code of Conduct, may also be applicable to these events. Specifically, the Code of Conduct lists as violations “Failure to comply with the direction of university officials or law enforcement officials acting in performance of their duties” and “Intentional misrepresentation, including but not limited to: Providing false or misleading information to a university official.” The LGS Handbook lists similar conduct as violating the Code of Conduct for Graduate students.

### **3. Scope of the Investigation:**

The investigation focuses on

- The actions of the Division of Campus Life, and specifically the Dean, to determine if actions leading to the termination of the Apr 24-25 protest violated the Policy.
- The actions of the Emory Police Department, which relied on the Atlanta Police for support during the final stages of the protest.
- The action of the protestors, whose actions may have contributed to the escalation of the situation.

#### **4. Investigation Process:**

During the Sep 22, 2023, CFOE meeting, it was decided to investigate the event. Following the letter from the faculty on Sep 26, the Hearing Panel (the Panel) was assembled. There were changes to the panel in the immediate aftermath due to departures from the CFOE. Eventually, the final panel composition became as listed in the preamble.

The panel communicated largely via email, and it had multiple Zoom conversations over the duration of the investigation. The investigation consisted of interviews of DCL representatives formally and informally on 04/25, 08/24, 09/29, 10/25, EPD representatives on Oct 4, SGA President on Oct 23, multiple faculty who were present during the protest (Nov 21, Dec 11), and finally the students (Dec 1). Where we had questions, we reached out to interviewees with requests for clarification via email. Recordings of the presentation of the Dean of Campus Life and the student organizers to the October ECAS Faculty Senate were also used in the process. Most of the interviews were conducted online, and there were no recordings of many of them to prevent a possibility of occasional slips of tongue being used against the parties involved. Initially we intended to attach summaries of the interviews to this report. However, we have received contradictory requests from different parties regarding attaching summaries or transcripts of the interviews to this report. Eventually, the Panel decided (after consultations with the University Senate) that only the timeline of the events, reconstructed based on all interviews, will be attached. Since we expect this report to be disseminated broadly, with copies of it archived online for many years to come, we will not be providing minutes of the interviews in writing and the names of the interview participants for privacy concerns and to prevent possible harassment of the interviewees.

The Panel tried to proceed with the utmost urgency. However, the amount of work required has become much larger than the time commitment historically required from the CFOE members, who are community representatives volunteering their time. Scheduling conflicts, departures from the Committee, and more direct work / study commitments have delayed the progress. Additionally, the Panel worked hard to secure an interview with the students who had first person experience at the terminated protest. The Panel insisted on a format of interviews paralleling the other interviews, while the students originally requested public meetings. The agreement on the format was reached during the Thanksgiving break, and the interview happened on Dec 1, 2023, with a cross-section of the students (but, unfortunately, not all the leaders of the group).

The report was drafted by the Chair, was edited and approved by all Panel members, and then commented on and approved by the Committee per standard procedures.

#### **5. Findings:**

The Investigation has revealed the following.

- Before the protest, Emory Stop Cop City Organizers chose not to register as a student organization or to communicate their plans to the DCL. DCL would usually find out about their plans only from social media posts. This had made it difficult to plan to support OE rights during the Apr 24 protest. DCL became aware of the event being organized at around 9 am on Apr 24 from the Emory Stop Cop City Instagram post (see screenshot of the post below) and sent an email to the OEOs list to secure OEOs presence at the event immediately.

- A total of four Open Expression Observers (OEO) were present during the event at different times. One OEO was present for the whole duration of the protest. The Dean of Campus Life was physically on the Quad at various times during the protest, but not continuously.
- EPD also monitored the protest but did not interfere until authority was transferred to them late at night. Specifically, when there is equipment in place (which can be climbed, or operated by protestors), when events are in prominent places, when there is a possibility for a large presence of non-campus community members, EPD is present per standard operating procedures. Because of wide dissemination of this protest information across the social media, EPD had additional safety concerns. Multiple event participants have expressed the opinion that EPD should not be present at events like the one in question. We believe that police presence may be warranted to provide public safety at highly visible open events, particularly when such events are likely to attract many participants from within and outside the University, which this event attracted. The university should continue engaging in discussions to align EPD procedures with the changing realities on campus, but we cannot endorse a blanket ban on EPD presence at OE events. The Panel thus did not investigate this line of questions further.
- The protests started on the Quad around 2pm; though exact time is hard to establish since different people arrived at different times. At peak, the number of participants was estimated to be over 100 people, and up to 200 people according to some participants. The lead OEO established communication with the event Student Organizers (SO) prior and during the event (as discussed above, we are not listing the names of either the OEOs or the SOs here), though because the Stop Cop City group has a diffuse leadership structure, it was not clear at the time if the communication was with the true leaders of the event. The protest was non-violent and largely non-disruptive according to all sources.
- For that entire day and the following week, the Quad had been reserved for university operations (preparations were being made for the Commencement, such as stage construction). Parts of the unassembled stage were on the Quad, but no active assembly was happening when the event started. Thus, the protest was treated as a protest in an unreserved space (8.14.5.7 of the Policy). In accordance with the requirement by the Policy to provide “affirmative support to ensure protests occur in places like the outdoor spaces in front of the buildings,” lead OEO facilitated the protest in the unreserved space for the afternoon. During the protest, OEOs informed the Protestors of various OE violations (e.g., blocking walkways, climbing a tree), which were immediately rectified by the Protestors. Lead OEO also facilitated communications between the protestors and the University, and particularly the Office of the President.
- DCL representatives suggest that they offered alternative spaces (e.g., Asbury Circle) to the protesters and continued making similar offers till, at least, 8pm, but none of the students who agreed to an interview with the Panel can corroborate this (notably, the SO, with whom the Lead OEO communicated, did not agree to an interview). According to DCL, accommodating the protest required suspension of preparations for the Commencement for Apr 24, and specifically delivery of risers.
- Student organizers were informed by the lead OEO that the space was reserved, but that the Protest would be allowed till the time they had communicated as the expected completion time. At that point, the protest would need to either end or relocate elsewhere. OEO/DCL were under the impression that the SOs accepted the plan that the event would end around 8:30 pm. According to the DCL, the lead OEO continued communications with the



organizers and reconfirmed the plan multiple times during the event. The lead OEO additionally encourage the protestors to reserve and move to Asbury circle, ESC, and other paces, instead of the Quad, which had been pre-reserved for the graduation. This continued till about 9:30pm. The students we interviewed could not corroborate this, but we were unable to interview all the students involved in organizing the event.

- DCL was in communications with EPD during the event, and planning by DCL/EPD was based on their perceived agreement with the Protesters about the timeline. Because of this, EPD released most of their personnel at the end of the workday, and no contingency plans in case of the Protest not ending on time were put in place. EPD stayed with only a few officers, which included the EPD Chief.
- According to all interviewees, the protests were peaceful. There were no signs of violence, either happening or immediately anticipated. Some interviewees even described the atmosphere as festive. Everyone agrees that violations of the Policy during early hours of the protest were minor and were immediately rectified by the Protestors.
- Shortly before 9pm, lead OEO communicated with the campus facilities to help clean up after the anticipated end of the event (they agreed to come at 11pm), communicated this to a SO, who then shared their cleanup plan and confirmed that no movie would be shown, and the event would end shortly.
- At 9:30pm lead OEO noticed the first tent assembled on the Quad (other interviewees suggested times after 8:30 or 9:00 pm for the tents emerging). The OEO immediately informed students that they couldn't occupy the space and couldn't take up residence on the Quad. The OEO communicated their surprise about the turn of events to the SOs since tents had not been part of the plan previously communicated to the DCL. According to DCL, SOs then informed the OEO that this may have been the plan all along, but they had not said anything on purpose. Lead OEO again reminded SOs that the location was reserved and that there was a major safety concern with the plan for an overnight stay on the Quad, and therefore the students needed to leave. In the presentation to the ECAS Faculty Senate, a SO characterized these interactions as "We did not communicate to [the Lead OEO] or to anybody else that we were planning on camping out, although this was not a sudden decision... We knew that the University would not be upfront in accommodating to us."
- Since bringing tents to the Quad was evidence of pre-mediated plans to stay on the Quad, not communicated to the DCL previously, this was interpreted by the DCL as the organizers previously "providing false or misleading information to a university official," which is a Code of Conduct violation. In the aftermath of the event, DCL decided not to pursue Code of Conduct violation, since this would have only inflamed the situation and antagonized relations between the students and the University.
- At this point DCL decided that the Protest was in violation of the Policy and must end. In addition to Code of Conduct violation, this decision was based on the perception that the protestors' actions were "interfer[ing] unreasonably with the general operations of the University" and constituted holding "Meetings, Events, or Protests under circumstances where the health or safety of persons is endangered." The OEO informed the organizers of this. Offers of relocation to a different location ceased then. Since this point, discussions between the Organizers and the DCL focused on how/when the event should end, and not on alternative means for expression.
- Around midnight, DCL decided that they could not guarantee security at the event anymore and decided to end the protest, transferring the authority to EPD. This was after the Atlanta

Community Press Collective published messages, such as “We are occupying the quad” (at about 11:31pm, see Attachment). DCL requests that we analyze the decision to give the authority to EPD in the context of the whole day’s events: DCL was engaging with the protestors for over 10 hrs, facilitating activities (walkout, lunch on Quad, memorial, vigil). DCL’s communications with the protestors involved multiple OEOs. By 9:30pm, personnel was released, everyone was tired, and then the students backed away from the agreement and got the tents out. This was a pre-meditated lie, and DCL personnel were asking themselves at the time what else was being planned by the protestors, and what else they were not sharing. Previous protests by other Stop Cop City groups turned into violent confrontations with police as recently as Mar 5, 2023 (<https://www.bbc.com/news/world-us-canada-64842272>). Protests were happening on campuses around the city, with conflicting messaging on social media sites. DCL suggests that, in this situation, they couldn’t trust statements by the protestors about their intentions and that they couldn’t guarantee the safety of protestors, of the EPD officers monitoring the events, of others on campus, and safety of the University property during the overnight event in these circumstances.

- No violence and no immediate threat of violence on the Quad prior to the decision to terminate the Protest was reported by either party with first-hand knowledge of events.
- Before delegating the control to EPD and terminating the event, DCL tried to contact the CFOE Chair since the Policy states that “the Chair of CFOE (or designee) must be consulted before termination of the protest.” DCL made multiple attempts to consult the Chair starting about 10:30 pm on Apr 24 and until the authority was transferred from DCL to EPD. The Chair was not available, and no designee was set ahead of time since there was no planning for the Protest by DCL/CFOE ahead of time.
- At 11:45PM the OEO communicated with SOs for the last time that the students could not remain on the Quad, and needed to leave, and that failure to comply would then require EPD to respond. After this, the authority was relegated to the EPD.
- When authority was delegated to EPD during the Apr 24 protest, the event was no longer considered under the OE policy, but was treated as a police matter. See the Police Department Operations Manual/Response to Civil Disorder, attached to this report. Thus, the role of EPD was not anymore to support the protest, but to safely end it. There was no deliberate plan for the APD to get engaged. At this point, with the intention to de-escalate, EPD Chief (plainclothes) personally communicated with the protestors that they must leave but could be back to continue in the morning, and that if the protestors would not leave, arrests would be necessary. While some protestors left, some did not.
- Once control was delegated to EPD, the Chief performed threat assessment. There are no exact formulas for threat assessment like this, and the assessment was done based on best practices and her experiences.
- In the initial assessment, there were between 20 and 30 protestors visible on the Quad (depending on the source, see also <https://emorywheel.com/epd-removes-stop-cop-city-student-protestors-from-quad/>). However, it was not clear who the protestors were (students or non-community members). The latter could cause problems, based on the history of previous protests in the city by umbrella groups, which had turned violent. EPD has a responsibility for safety and must anticipate such possible violence. Other data used in the initial threat assessment were the absence of lighting on the Quad. Further, there were tents, and it was not clear if there were any people or weapons in the tents. Intent of the protestors

was unknown. All of these considerations increased the perceived threat level during the assessment.

- The assessment was that there were not enough staff that EPD could activate (5 officers were available) to end the protest safely for the protestors and the EPD officers in the event the situation escalated. The Chief then reached out with the mutual aid request to the responding agency. Since Emory campus in the Atlanta, the responding agency is APD. While the optics of APD responding to a protest about APD are not the best, the rule is that APD responds to events happening in their jurisdiction.
- When APD cruisers arrived, the Chief asked for them to shine light on the Quad for the safety of the officers; however, EPD was always in charge, and APD was there just to support. APD did not converse with Protesters, were standing by only, and interactions of APD with even EPD were minimal.
- Once APD arrived, the Chief explained to the Protestors that arrests would be the next step if the Protestors would not leave. She was doing most of the communications and asked all other officers to not engage with the students directly. Some recordings of these conversations between the Chief and the Protestors immediately preceding the termination are available, see for example <http://tinyurl.com/2d5ehv62>. Protestors dispersed peacefully and no arrests were made.
- EPD believes that events could have proceeded differently, had the protestors informed the university of their true plans ahead of time, allowing for better planning of security at the event.
- Protests re-started at the Haygood Gate and Asbury Circle next day, Apr 25, and continued until the Commencement.
- DCL believes that they acted correctly, given the information they had during the event. After the event, DCL met with the representatives of the SGA to discuss things as well. DCL has worked on improving their protocols since the event, meeting with the involved students and faculty many times, to understand their experiences.
- Office of the President sent a letter to the President's Leadership Team and the Council of Deans (see attached) about the termination of the protest. This statement was written within hours of the incident, and it is likely that now, knowing what we know, the statement could be different. In this statement, the administration did not refer to the events as "termination of the protest", and it is not using these words even to this date, with the argument being that, since the Protestors left voluntarily after EPD took control, the event was not forcibly terminated. President Fenves additionally participated in The Wheel interview, published Sep 6, 2023, <https://emorywheel.com/qa-fenves-speaks-to-wheel-starts-4th-year-as-president/>, where he answered questions about the April protest. DCL considers these as the required statement under 8.14.7.3 of the Policy.
- Over the investigation, it was mentioned multiple times by the student protestors and Emory faculty members that police (EPD or APD) should not have been present at the event. There are additionally persistent concerns about the need to reserve rooms for OE events, the presence of OEOs during events, and other circumstances that seem to suggest that the group is being singled out by the administration, which limits Open Expression rights of the group.

### **Analysis:**

The Panel is saddened by the course of events. We are also saddened by the adversarial relationship that has developed between the Emory Stop Cop City and the faculty that support

them on the one hand, and the DCL, CFOE, and other parties on the other. We strongly believe that police action on the Quad could have been avoided had the Emory Stop Cop City supporters on the one hand and the Administration on the other engaged in a constructive dialogue ahead of time, focusing on understanding each other's positions rather than on categorical demands. We hope that it is not too late to start this civil dialogue. Even without such dialogue, police action could have been prevented had clear and open communications between the organizers and the DCL been established ahead of time. We are convinced that, at least at the beginning of the events, the actions of the Dean of Campus Life and the OEOs were driven by a sincere desire to help the Emory Stop Cop City protestors to achieve their expression goals, and that they offered reasonable accommodations to the Protestors. However, the analysis of the situation gets more complicated from this point onwards.

The termination of the protest is a serious event, and we are concerned by the University Administration downplaying its seriousness. Even if no arrests were made and no force was used, we believe that this Protest should still be viewed as forcibly terminated since Protestors dispersed only after a threat of arrest. Thus, full accounting of events that led to it must be provided to the Community; a memo sent to various members of the Administration is insufficient in this regard.

At the same time, we are concerned by the hyperbolic statements claiming irreparable harm at the hand of DCL/EPD/APD, which have come from some of the student participants and faculty supporting them: after all, no arrests were made, no force was used, Protestors reconvened on-campus the following day, have continued protesting to date, and there is no evidence of the Administration persecuting participants or organizers of the April protests. Downplaying or exaggerating concerns to serve one's own agenda does not help build a campus community that is open to alternative viewpoints and that respects concerns and promotes rights of all its members.

The rights to "freedoms of thought, inquiry, speech, and assembly" are paramount to the functioning of a modern university. Thus, Emory University, which is a private institution not restricted by the First Amendment of the U.S. Constitution, has chosen to give its community members Open Expression rights, comparable to those enjoyed by members of American public universities. In this context, Emory acts as an analog of the government by supporting these rights and resolving conflicts around them, and by not unreasonably restricting OE rights of its community members. Various parts of the University must provide checks and balances on each other to ensure that OE rights are upheld. Just like there is no intrinsic conflict of interest in different branches of the government providing checks on each other, there is no intrinsic conflict of interest in various parts of the University (Administration, Senate, CFOE, etc.) tasked with reviewing each other's actions, as long as the checks are done by individuals different from those being checked and detailed investigations are possible and supported. Thus, we believe that it is perfectly reasonable for Protestors to protest one part of the institution, while expecting that another part will ensure that their rights are not violated. In view of this, we are concerned that the participants in the Apr 24-25 protests did not file a complaint with CFOE and initially chose not to engage with the Committee. However, we do recognize that this lack of engagement between the students and the CFOE is partially due to a greater misunderstanding within the

Emory community regarding the structure of Open Expression support at the University and the role of the CFOE, which we recommend addressing (see below).

At the same time, Emory is not a U.S. Federal government. It is a university, and pursuit of truth, Protest and Dissent historically have been a cornerstone part of ethos of a modern university. Thus, in conflicts around Open Expression, we must err on the side of supporting Open Expression.

Nonetheless, OE rights provided by the Policy can be restricted. The University has affirmative rights to defend its interests during OE events, balancing interests of Protestors, other community members (including administrators and public safety officers), and the ability of the institution to continue educating, doing research, and providing healthcare long term. In part, such balancing might be needed to ensure that the University has the resources to maintain the spirit of Open Expression not just for a moment, but for many years to come. In view of these considerations, we believe that, while the University must support impromptu protests in unreserved spaces if such protests do not unreasonably interfere with operations or safety, the extent to which the University must support protests can differ depending on considerations such as (but not limited to): whether the intent of Protestors is known, whether events may attract substantial presence of non-community members (over which the University has little enforcement ability), whether open communications between Protestors and the University officials are established, and whether the University has time and resources to organize security for contingencies that might be reasonably anticipated during a Protest.

Put simply, Protestors who choose to make others uncomfortable as a strategy of their Protest should have a reasonable expectation of becoming uncomfortable themselves.

At the same time, in its responses, the university must be very sensitive to how its actions reflect on the perceptions of its commitment to its declared support for Open Expression. We stress, additionally, that the choice of to which extent Protests must be supported cannot depend on their content. In particular, support for a Protest may be discontinued based on the inability to provide adequate security, but not on the content of the expression. We understand that the line separating these may be drawn in different places by different members of the Community, and it is the role of this Committee to establish reasonable community standards.

Based on these general considerations, the analysis of the complaints in the original complaint letter by the Hearing Panel is as follows:

*i. "In violation of 8.14.7.1, the Dean of Campus Life delegated their authority to the Emory Police Department in the absence of an emergency as defined therein (a situation that poses imminent serious bodily harm, serious threat, imminent life-threatening behavior, reckless disregard for human life, or threat to life, limb, or property);"*

The Panel is split on the determination of whether violation has occurred. We believe that, when deciding if a violation occurred, it is important to put ourselves in the position of the parties involved and to pretend that we know only what they knew at the time. On Apr 24, the Dean of Campus Life knew that the Protest was in an unreserved place, that the OEO had worked with

the Organizers to support their OE rights for many hours, treating this as an impromptu protest, that the agreement had been reached that the students would leave the Quad at the time communicated by them, and that the students then broke the perceived agreement. Additional context is that the Stop Cop City protests had turned violent elsewhere in Atlanta, and the Protestors on Emory campus posted on social media a broad invitation to join the Protest, potentially to the same group of external participants. Finally, the DCL believed that they had been misled about the Protestor's plans to stay overnight, and hence did not trust their statements about the nature of the planned overnight "occupation."

The original complaint and the subsequent interviews emphasized the word "imminent" in the paragraph of the Policy quoted above, and that no imminent threat was present. We explored how imminency had been defined in related legal arguments and found no universal agreement. We point out that "imminent" is not always associated with a specific absolute time duration; for example, when talking about an earthquake, imminent may mean centuries. We suggest that one way to define imminence of an event is in comparison to how long it would take to prepare for, to respond to, or to avoid the event. The cost of a non-response may also factor in the determination. In this context, if the situation on the Quad could be reasonably expected to change dramatically for the worse on a time scale shorter than DCL/EPD would need to mount a response, given the limited personnel available on hand, then one could view the situation as posing an imminent serious threat to safety.

We understand that, in principle, this view can open opportunities for abuse, where an administrator could declare a situation threatening based on unreasonable assessment of the situation, or by deliberately creating imminence --- circumstances where a response to remotely threatening contingencies could take too long. However, we believe that a review by an independent body, such as CFOE, will prevent such abuse. To aid in such a review, a detailed statement of circumstances by DCL/EPD is needed any time when a determination of an imminent threat is made, and police action ensues, as already required by the Policy.

In view of these considerations, some members of the Panel believe that being strongly concerned about the safety on campus during this particular overnight protest and hence delegating authority to EPD can be viewed as warranted. While there is a unanimous agreement that, in the hindsight, terminating the Protest was an over-response, and that we wish that EPD, and eventually APD, were not involved, multiple members of the Panel cannot condemn DCL/OEO for choosing this course of action. Since we have not been able to reach a unanimous decision to date, we cannot proclaim that the violation occurred.

The Panel is less sympathetic to other arguments for delegating authority to EPD, which were floated during the interviews, such as arrival of construction equipment on the Quad next day. If this was the main reason for termination, the termination should have happened immediately before the arrival of the equipment, but not between 1 and 2 am.

The Panel also received complaints about the DCL's insistence, apparently from the beginning of the protest, that the protest needed to not continue overnight. We are concerned about this position since, if a delay in the delivery of risers was already being implemented to accommodate the protest, and the heavy equipment was not supposed to arrive until the next

morning, then the protest could have been supported as an overnight event. However, since the SOs did not make their plans known at the beginning of the protest and agreed to the Protest ending at the end of the day, we do not know whether DCL would have collaborated with a hypothetical overnight event request and would have worked to arrange the appropriate security. The Panel cannot issue judgements about actions that did not happen.

ii. *“In violation of 8.14.7.2, the Dean of Campus Life and the Committee for Open Expression did not work with students to identify ways to continue the protest;”*

We find that no violation has occurred. There is ample evidence that DCL/OEO worked to accommodate the Protestors until tents were put up on campus. Alternative locations were offered before that time, and the Protest reconstituted next day at two locations (Asbury Circle and Haygood Gate). CFOE members were present at both locations on Apr 25 to confirm that the Protestors could use their OE rights.

iii. *“In violation of 8.14.7.3, the Chair of the Committee for Open Expression was not consulted before student arrests were threatened and the protest was forcibly terminated;”*

We find that DCL has done their duty attempting to consult the CFOE Chair. The spirit of the policy is not to paralyze operations when an unexpected exception occurs. When the Chair was not available, and no alternative designee was set ahead of time since neither CFOE nor DCL knew about the Protest ahead of time, the DCL acted based on the best information available to them, and based on their interpretation of the Policy, which did not provide explicit guidance in this situation.

The events highlight a potentially bigger issue. If the OEO were able to reach the Chair in the late evening hours of Apr 24, it is likely that, based on the interpretation of the events by the OEO, the Chair would have conceded to the request to terminate the Protest. In other words, the request to contact the Chair before termination, or before declaring a violation, does not necessarily provide an independent check on the situation. At the same time, getting the CFOE Chair or the designee to talk with all parties, or to get on campus is not feasible in a rapidly changing situation. We believe that Policy revisions are needed to address this concern (see below).

iv. *“In violation of 8.14.7.3, the protest was forcibly terminated in the absence of any of the factors that may have warranted forcible termination as indicated therein (injury to persons, property damage, or significant interference with educational processes);”*

See our response to complaint (i) above. The same analysis applies here.

v. *“In violation of 8.14.7.3, the Dean of Campus Life has not yet published a full statement of the circumstances leading to the forcible termination of the protest.”*

The Panel agrees that a violation has occurred. As explained above, we view the events as a forcible termination. We find that the letter to the President’s Leadership Team and the Council of Deans does not fulfill either the letter or the spirit of the requirement that “a full statement of

the circumstances leading to the incident shall be publicized by the DCL within the University.” We request that the DCL writes such a statement to the Emory Community soon.

## **6. Conclusions:**

1. The Panel found that the Protest on Apr 24-25 was, in fact, terminated by DCL/EPD/APD. The Panel questions the decision to terminate the Protest, but it was unable to reach a unanimous decision on whether delegating the authority to EPD and terminating the Protest was a violation of the Policy.
2. The Panel found that the termination could have been avoided had the Emory Stop Cop City organizers taken a less confrontational stand with the DCL, who we believe have been working to support protests in general, and the early part of the Apr 24 Protest, in particular. We believe that direct, honest, and timely communications with DCL could have resulted in better preparedness and more security / safety resources dedicated to the Protest, potentially allowing it to continue overnight.
3. The Panel noted that DCL/EPD should have prepared better for the Protests. When events outside of the campus result in on-campus protest, there often is ample time to plan. The contingency of Protestors not leaving the Quad overnight should have been analyzed, and the Dean of Campus Life and the Emory Police Chief should have retained sufficient resources to ensure safety in such situation, decreasing the likelihood of termination of the event or calling on APD. If support of overnight protests requires revisions of standard operating procedures, those should be made.
4. The Panel noted that the student organizers of the Protest may have violated Student Codes of Conduct by misleading university officials as a strategy of the Protest.
5. The Panel found that DCL did not provide a full statement regarding the termination to the Emory community in violation of the Policy.
6. The Panel found that the Policy requires revisions in the areas governing rapid responses to emerging situations, in the area of handling exceptions, and in the area governing responses to planned vs. impromptu events.

## **7. Recommendations:**

1. We request that DCL issue a detailed statement surrounding the termination of the Protest on Apr 24-25, 2023, entering on record how the termination decision was reached and why, how threat assessment was performed, and accounting for steps between when the decision was made and when EPD/APD officers' presence ended the event.
2. We ask CFOE/University Senate to consider revisions of the Policy in areas such as identified in 6.6 above, but not limited to them. Specifically, removing immediate enforcement of the Policy from the role of CFOE is needed, which will make CFOE a deliberative body resolving conflicts on longer time scales, rather than engaging in real-time decision making, for which it is ill-equipped.
3. We request that the community take its responsibility under the Policy to respect others seriously, even when passions are high around various OE events. During the investigation, we noticed instances of hyperbolic language, dismissing concerns of others, and targeting community members for their opinions. This should be avoided.
4. Investigation revealed that there is a limited understanding within the Emory community regarding the content of the Policy, the structure of Open Expression support at the University, and the role of the CFOE. We thus recommend (see below) that the University



Senate and the Administration both prioritize openly discussing and explaining the Policy and the role of its various support structures to the Emory community, to clarify how the University handles promotion of Open Expression on campus.

5. Interactions between EPD and the rest of the Emory Community should be continuously re-evaluated. CFOE has been invited to participate in the EPD Community Partnership, with the goal of re-imagining the EPD-Community interactions, and we welcome this development. We also suggest that EPD/DCL contingency planning can be improved.
6. This investigation had a complexity much higher than can be handled by a small volunteer group of students, staff, and faculty, who have their primary responsibilities to attend to alongside with the service on the CFOE. We recommend that the University Senate develops means for supporting work of this magnitude and complexity in the future by providing administrative support, reducing other responsibilities for participants, and providing additional topical expertise.

## **8. Confidentiality:**

The Panel requests to keep its deliberations leading to this report confidential. We will not be releasing names of involved individuals and minutes of interviews, as explained elsewhere in this Report.

Confidentiality was a concern for protestors during the investigation and has delayed it somewhat. While names of the student participants in the Protest were known from early on (e.g., from interviews to The Wheel), it was also clear that some of the students had no interest in interacting with CFOE. Whether CFOE should reach out to these students and how was a point of discussion.

## **9. Next Steps:**

We propose that:

1. The University Senate should request a detailed statement from DCL about termination of the Protest.
2. Soon after DCL issues the full statement, the University Senate / CFOE should organize a community forum to discuss the events, aiming to restore trust and to create an environment where similar confrontations are less likely.
3. The Senate, the University Administration, and the Student Government should work proactively to establish a campus climate that emphasizes dialogue, listening, and cooperation over confrontation.
4. The University Senate/CFOE should initiate a process of re-examining and possibly amending the Respect for Open Expression Policy to address the concerns identified by this Investigation.

## **10. Appendix:**

Original investigation request:



September 26, 2023

**Re: Violations of Respect for Open Expression Policy**

To the Committee for Open Expression, Emory University:

We are writing to request the Committee to undertake an investigation into some violations against Emory University's Respect for Open Expression Policy which we believe occurred during the student protest that took place on April 24–25, 2023. We previously submitted a letter to the College Senate outlining these violations on August 21, 2023.

We are especially concerned that armed officers from the Atlanta Police Department were called onto Emory's main campus to terminate a peaceful student protest. Emory students had organized a walk-out and rally beginning at 2:00pm on Monday, April 24 to protest the construction of the Atlanta Public Safety Training Center ("Cop City"). Some students occupied the Quad during the night. The Atlanta Police Department was called onto campus by Emory Police despite the peaceful nature of the protest. Emory and Atlanta police threatened the students with arrest and then physically dispersed the protest between 1:00 and 2:00am on the morning of Tuesday, April 25.

We want to call the Committee's attention to the following articles of the Respect for Open Expression Policy which we believe were violated by the Dean of Campus Life and the Committee for Open Expression itself over the course of these events:

- In violation of 8.14.7.1, the Dean of Campus Life delegated their authority to the Emory Police Department in the absence of an emergency as defined therein (a situation that poses imminent serious bodily harm, serious threat, imminent life-threatening behavior, reckless disregard for human life, or threat to life, limb, or property);
- In violation of 8.14.7.2, the Dean of Campus Life and the Committee for Open Expression did not work with students to identify ways to continue the protest;
- In violation of 8.14.7.3, the Chair of the Committee for Open Expression was not consulted before student arrests were threatened and the protest was forcibly terminated;
- In violation of 8.14.7.3, the protest was forcibly terminated in the absence of any of the factors that may have warranted forcible termination as indicated therein (injury to persons, property damage, or significant interference with educational processes);
- In violation of 8.14.7.3, the Dean of Campus Life has not yet published a full statement of the circumstances leading to the forcible termination of the protest.

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complint@emory.edu

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In pursuance of 8.14.4, we request that the Committee for Open Expression initiate a formal investigation into these violations.

Respectfully yours,

Dilek Huseyinzadegan, Associate Professor of Philosophy  
Sara McClintock, Associate Professor of Religion  
Sean Meighoo, Associate Professor of Comparative Literature

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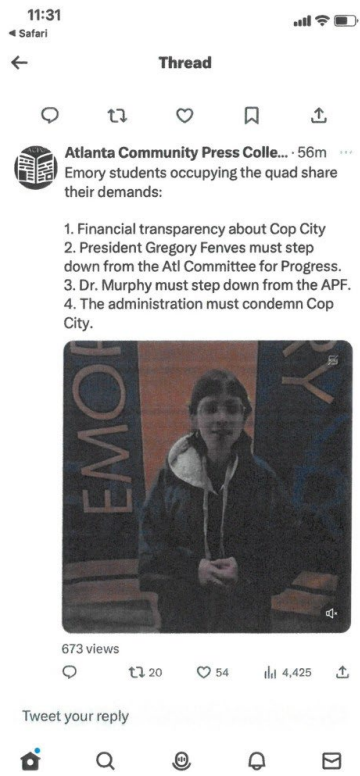
Apr 24 Instagram post advertising the upcoming protest:



Copy of an Instagram post by Emory Stop Cop City, inviting people to join the event later in the day. Note a large number of reactions to the post.



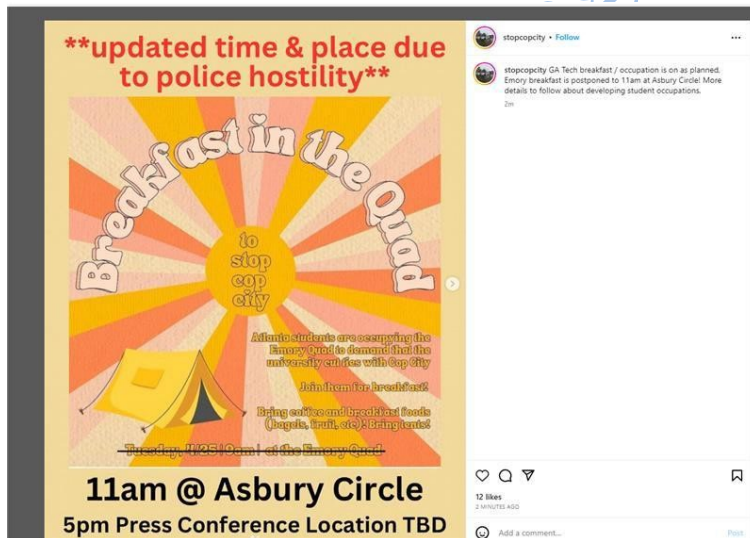
April 24 11:31pm screenshot of Atlanta Community Press Collective, listing demands and announcing intentions to occupy the Quad.



April 25 12:43 am Instagram post for Atlanta Community Press Collective, showing situation on the ground at the time.




April 25 updated poster mentioning Quad occupation; this was intended to be the morning continuation of the overnight protest.



Include any supporting documents, evidence, or additional materials that are relevant to the investigation.

EPD Operations Manual / Response to Civil Disorder

 <b>EMORY POLICE DEPARTMENT OPERATIONS MANUAL</b>	<b>Chapter</b>	<b>Procedure Number</b>
	<b>18</b>	<b>18-8004</b>
<b>Subject</b> <b>Response to Civil Disorder</b>	<b>Date of Issue</b> <b>04.01.2012</b>	<b>Issuing Authority</b> <b>Chief of Police</b>
<b>Reference</b> <b>Emory University 8.14: Respect for Freedom of Expression Policy</b>	<b>Effective Date</b> <b>07.01.2012</b>	New (X) Amends ( ) Rescinds ( )

**S.O.P. 18-8004      RESPONSE TO CIVIL DISORDER**

**I. PURPOSE:**

To identify a plan for civil disorder. During civil disorder, the Department's mission is the protection of life and property, restoration of law and order, maintenance of the safety and security of all persons and university property involved, and the prevention of disruption of University operations. This mission may be accomplished by dispersing unauthorized assemblages and by increased patrol within the disturbance area.

**II. APPLICABILITY:**

These procedures apply to all police and non-police employees.

**III. DEFINITIONS:**

**IV. PROCEDURES:**

The Department may present a show of force, establish road or area blockades, disperse crowds, employ irritant agents, and perform other required operations. Police Division supervisors or the Chief of Police shall coordinate the Department's response to civil disorders in collaboration with University Administration.

- a. Impartiality of the Department in Civil Disorders - Care must be exercised to refrain from taking, or giving an appearance of taking, sides in any civil disturbance.
- b. Enforcement of Laws at Civil Disorders - Officers are required to follow lawful orders and directions which may include the arrest of violators and to impose restrictions which are mandated.
- c. Deployment at Civil Disorders - The most appropriate course of action to restore law and order will be pursued within departmental guidelines. The measures used shall be only those measures reasonably necessary to achieve the objective.  
In the event of a civil disorder whereby mass arrests occur, Emory Police will coordinate with any assisting law enforcement agency and determine the process for the mass processing and identification of arrestees,

transporting of prisoners, and coordination of temporary detention facilities.

- d. Non-Disruptive Demonstrations – Orderly, peaceful, non-disruptive demonstrations, protests, etc., are governed by the Emory University 8.14: Respect for Freedom of Expression Policy on such activity,
- e. Department personnel will be briefed on the existing situation, mission, course of action, and control measures to be employed.
- f. The Emory policy 8.14: Respect for Freedom of Expression Policy is a part of this S.O.P. to provide staff with the Emory University guidelines and can be found: [http://www.emory.edu/CAMPUS\\_LIFE/documents/freedom\\_of\\_expression\\_policy2.pdf](http://www.emory.edu/CAMPUS_LIFE/documents/freedom_of_expression_policy2.pdf)

**V. PROHIBITION: NONE**

CONF - Pending Senate Approval



Letter sent to the President's Leadership Team by the Office of the President Chief of Staff on the morning of Apr 25, discussing the Protest.

**From:** Miller, Danielle  
**Sent:** Tuesday, April 25, 2023 7:52 AM  
**To:** Adelman, Amy; Anderson, Luke; Augostini, Christopher; Bellamkonda, Ravi V; Bruner, Deborah W.; Dykes, Allison; Franklin, Robert; Gelaye, Enku; Henderson, Carol E.; Kivel, Matthew; Laman, Hope Harrell; McGonigle, Gregory; Miller, Danielle; Newton, Joshua; Office of the Provost - Ravi Bellamkonda; President Gregory L. Fennes; Taylor, Cameron P; Thadhani, Ravi  
**Subject:** Atlanta Police Training Center Protest

Dear PLT,

Yesterday afternoon and evening, Emory students held a demonstration in opposition to the planned Atlanta Police Training Center on the Quad. In accordance with our policy on Open Expression, we communicated with event organizers and supported their right to express their opinion on this issue. Students invited several local media outlets to the event and that coverage has been rolling out over the past 12 hours.

Late last evening, it became clear that event organizers had not clearly communicated their plans, and participants erected tents on the Quad with the intention of staying overnight. Through the Open Expression program, we communicated clearly with organizers that this development was not one that we would allow. This communication escalated to the involvement of the Emory Police Department, whose officers spoke with students and informed them of the potential repercussions of non-compliance. I am pleased to share that this dialogue was successful and that students cleared the Quad without incident.

Due to the attention that the Atlanta Police Training Center receives in local, regional, and national media, we expect that coverage of this demonstration will continue over the next several days.

We are incredibly proud of the successful communication we navigated yesterday with our partners in Campus Life, the Open Expression program, and the Emory Police Department. It is a testament to the great work of many.

If you have any questions, please do not hesitate to reach out.

Thank you,  
Danielle

**Danielle M Miller**  
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## 11. Acknowledgments:

None.